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PART IV.

Legislative Measures and Rules thereunder.

Order No. P. 571—Legis. 11-38-1, dated Bangalore, 27th July 1938.

Ordered that the accompanying Act to consolidate and amend the law relating to Trading Companies and other associations, which received the assent of His Highness the Maharaja, on the thirteenth day of July 1938, be published as Act No. XVIII of 1938, in the *Mysore Gazette* for general information.

By Order,
M. VENKATESA IYENGAR,
Secretary to Government,
General Department.

ACT No. XVIII OF 1938.

(*Received the assent of His Highness the Maharaja on the thirteenth day of July 1938.*)

ACT TO CONSOLIDATE AND AMEND THE LAW RELATING TO TRADING COMPANIES AND OTHER ASSOCIATIONS.

Whereas it is expedient to consolidate and amend the law relating to Trading Companies and other Associations; it is hereby enacted as follows:—

PART I.

PRELIMINARY.

Short title, commencement and extent.

1. (1) This Act may be called the Mysore Companies Act, 1938.

(2) It shall come into force on the first day of October 1938.

(3) It extends to the whole of Mysore.

Definitions.

2. (1) In this Act unless there is anything repugnant in the subject or context,—

(*1*) "articles" means the articles of association of a company as originally framed or as altered by special resolution, including, so far as they apply to the company, the regulations contained in Table A in the First Schedule annexed to the Mysore Companies Act, 1895, or in Table A in the First Schedule annexed to the Mysore Companies Act, 1917, or in Table A in the First Schedule annexed to this Act.

(*2*) "company" means a company formed and registered under this Act or an existing company:

(*3*) "the Court" means the Court having jurisdiction under this Act:

(*4*) "debenture" includes debenture stock:

(*5*) "director" includes any person occupying the position of a director by whatever name called:

(*6*) "District Court" means the principal Civil Court of original jurisdiction in a district:

(*7*) "existing company" means a company formed and registered under the Indian Campanies Act, 1866, or

under the Mysore Companies Act, 1895, or under the Mysore Companies Act, 1917 :

(*7-A*) " the Indian Companies Act, 1866," means Act X of 1866 as extended to Mysore :

(*8*) " Insurance company " means a company that carries on the business of insurance either solely or in common with any other business or businesses :

(*9*) " manager " means a person who, subject to the control and direction of the directors, has the management of the whole affairs of a company, and includes a director or any other person occupying the position of a manager by whatever name called and whether under a contract of service or not :

(*9-A*) " managing agent " means a person, firm or company entitled to the management of the whole affairs of a company by virtue of an agreement with the company, and under the control and direction of the directors except to the extent, if any, otherwise provided for in the agreement, and includes any person, firm or company occupying such position by whatever name called :

Explanation.—If a person occupying the position of a managing agent calls himself a manager he shall nevertheless be regarded as managing agent and not as manager for the purposes of this Act.

(*10*) " memorandum " means the memorandum of association of a company as originally framed or as altered in pursuance of the provisions of this Act :

(*11*) " officer " includes any director, managing agent, manager or secretary but, save in sections 235, 236 and 237, does not include an auditor.

(*12*) " prescribed " means, as respects the provisions of this Act relating to the winding up of companies, prescribed by rules made by the High Court, and, as respects the other provisions of this Act, prescribed by the Government ;

(*13*) " private company " means a company which by its articles—

(*a*) restricts the right to transfer the shares, if any ; and

(*b*) limits the number of its members to fifty not including persons who are in the employment of the company ; and

(*c*) prohibits : any invitation to the public to subscribe for the shares, if any, or debentures of the company :

Provided that where two or more persons hold one or more shares in a company jointly they shall, for the purposes of this definition, be treated as a single member:

(*13-A*) "public company" means a company incorporated under this Act or under the Mysore Companies Act, 1917, or under the Mysore Companies Act, 1895, or under the Indian Companies Act, 1866, which is not a private company.

(*14*) "prospectus" means any prospectus, notice, circular, advertisement or other invitation, offering to the public for subscription or purchase any shares or debentures of a company, but shall not include any trade advertisement which shows on the face of it that a formal prospectus has been prepared and filed:

(*15*) "the registrar" means a registrar or assistant registrar performing under this Act the duty of registration of companies: and

(*16*) "share" means share in the share capital of the company, and includes stock except when a distinction between stock and shares is expressed or implied.

(2) Where the assets of a company consist in whole or in part of shares in another company, whether held directly or through a nominee and whether that other company is a company within the meaning of this Act or not, and

(*a*) the amount of the shares so held is at the time when the accounts of the holding company are made up more than fifty per cent of the issued share capital of that other company or such as to entitle the company to more than fifty per cent of the voting power in that other company, or

(*b*) the company has power (not being power vested in it by virtue only of the provisions of a debenture trust deed or by virtue of shares issued to it for the purpose in pursuance of those provisions) directly or indirectly to appoint the majority of the directors of that other company,

that other company shall be deemed to be a subsidiary company within the meaning of this Act and the expression 'subsidiary company' in this Act means a company in the case of which the conditions of this sub-section are satisfied and includes a subsidiary company of such company:

Provided that where a company, the ordinary business of which includes the lending of money, holds shares in another company as security only, no account shall, for the purpose of determining under this section whether that other company is a subsidiary company, be taken of the shares so held.

Jurisdiction of the Courts.

3. (1) The Court having jurisdiction under this Act shall be the High Court:

Provided that the Government may, by notification in the official Gazette and subject to such restrictions and conditions as it thinks fit, empower any District Court to exercise all or any of the jurisdiction by this Act conferred upon the Court, and in that case such District Court shall, as regards the jurisdiction so conferred, be the Court in respect of all companies having their registered offices in the district.

(2) For the purposes of jurisdiction to wind up companies, the expression 'registered office' means the place which has longest been the registered office of the company during the six months immediately preceding the presentation of the petition for winding up.

(3) Nothing in this section shall invalidate a proceeding by reason of its being taken in a wrong Court.

PART II.

CONSTITUTION AND INCORPORATION.

Prohibition of partnerships exceeding certain number.

4. (1) No company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking unless it is registered as a company under this Act.

(2) No company, association or partnership consisting of more than twenty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act.

(3) This section shall not apply to a joint family carrying on joint family trade or business and where two or more such joint families form a partnership, in computing the number of persons for the purposes of this section, minor members of such families shall be excluded.

(4) Every member of a company, association or partnership carrying on business in contravention of this section shall be personally liable for all liabilities incurred in such business.

(5) Any person who is a member of a company, association or partnership formed in contravention of this section shall be punishable with fine not exceeding one thousand rupees.

MEMORANDUM OF ASSOCIATION.

Mode of forming incorporated company.

5. Any seven or more persons (or, where the company to be formed will be a private company, any two or more persons) associated for any lawful purpose may, by subscribing their names to a memorandum of association and otherwise complying with the requirements of this Act in respect of registration, form an incorporated company, with or without limited liability (that is to say), either—

(*i*) a company having the liability of its members limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them (in this Act termed a company limited by shares); or

(*ii*) a company having the liability of its members limited by the memorandum to such amount as the members may respectively thereby undertake to contribute to the assets of the company in the event of its being wound up (in this Act termed a company limited by guarantee); or

(*iii*) a company not having any limit on the liability of its members (in this Act termed an unlimited company.)

Memorandum of company limited by shares.

6. In the case of a company limited by shares—

(1) the memorandum shall state—

(*i*) the name of the company, with "Limited" as the last word in its name;

(*ii*) the objects of the company;

(*iii*) that the liability of the members is limited;

(*iv*) the amount of share capital with which the company proposes to be registered, and the division thereof into shares of a fixed amount:

(2) no subscriber of the memorandum shall take less than one share:

(3) each subscriber shall write opposite to his name the number of shares he takes.

Memorandum of company limited by guarantee.

7. In the case of a company limited by guarantee—

(1) the memorandum shall state—

(*i*) the name of the company, with "Limited" as the last word in its name;

(*ii*) the objects of the company;

(*iii*) that the liability of the members is limited;

(*iv*) that each member undertakes to contribute to the assets of the company in the event of its being wound up while he is a member, or within one year afterwards, for payment of the debts and liabilities of the company contracted before he ceases to be a member, and of the costs, charges and expenses of winding up, and for adjustment of the rights of the contributories among themselves, such amount as may be required, not exceeding a specified amount:

(2) if the company has a share capital—

(*i*) the memorandum shall also state the amount of share capital with which the company proposes to be registered and the division thereof into shares of a fixed amount;

(*ii*) no subscriber of the memorandum shall take less than one share;

(*iii*) each subscriber shall write opposite to his name the number of shares he takes.

Memorandum of unlimited company.

8. In the case of an unlimited company—

(1) the memorandum shall state—

(*i*) the name of the company;

(*ii*) the objects of the company:

(2) if the company has a share capital—

(*i*) no subscriber of the memorandum shall take less than one share;

(*ii*) each subscriber shall write opposite to his name the number of shares he takes.

Printing and signature of memorandum.

9. The memorandum shall—

(*a*) be printed,

(*b*) be divided into paragraphs numbered consecutively, and

(*c*) be signed by each subscriber (who shall add his address and description) in the presence of at least one witness who shall attest the signature.

Restriction on alteration of memorandum.

10. A company shall not alter the conditions contained in its memorandum except in the cases and in the

mode and to the extent for which express provision is made in this Act:

Provided that any provision in the memorandum relating to the appointment of a manager or managing agent and other matters of a like nature incidental or subsidiary to the main objects of the company, shall not be deemed to be such condition.

Name of company and change of name.

11. (1) A company shall not be registered by a name identical with that by which a company in existence is already registered, or so nearly resembling that name as to be calculated to deceive, except where the company in existence is in the course of being dissolved and signifies its consent in such manner as the registrar requires.

(2) If a company, through inadvertence or otherwise, is, without such consent as aforesaid, registered by a name identical with that by which a company in existence is previously registered, or so nearly resembling it as to be calculated to deceive, the first-mentioned company may, with the sanction of the registrar, change its name.

(3) Except with the previous consent of the Government given in writing under the hand of one of the Secretaries to the Government, no company shall be registered by a name which—

(*a*) contains any of the following words, namely, "Maharaja," "Royal," "State," or any word which suggests or is calculated to suggest the patronage of His Highness the Maharaja or any connection with His Highness's Government; or

(*b*) contains the word "Municipal" or any word which suggests or is calculated to suggest connection with any municipality or other local authority:

Provided that, notwithstanding anything contained in section 290, the Government may, at any time, after serving a notice in writing giving reasons and after hearing objections, if any, thereto, pass an order requiring any company registered, either before or after the passing of this Act under any enactment for the time being in force, with a name containing such words, to alter or omit those words, within a period of three months from the date on which the order is communicated to the company.

(4) Any company may, by special resolution and subject to the approval of the Government signified in

writing, under the hand of one of the Secretaries to the Government, change its name.

(5) Where a company changes its name, the registrar shall enter the new name on the register in place of the former name, and shall issue a certificate of incorporation altered to meet the circumstances of the case. On the issue of such a certificate, the change of name shall be complete.

(6) The change of name shall not affect any rights or obligations of the company or render defective any legal proceedings by or against the company; and any legal proceedings that might have been continued or commenced against it by its former name may be continued or commenced against it by its new name.

Alteration of memorandum.

12. (1) Subject to the provisions of this Act a company may, by special resolution, alter the provisions of its memorandum with respect to the objects of the company, so far as may be required to enable it—

(*a*) to carry on its business more economically or more efficiently; or

(*b*) to attain its main purpose by new or improved means; or

(*c*) to enlarge or change the local area of its operations; or

(*d*) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; or

(*e*) to restrict or abandon any of the objects specified in the memorandum; or

(*f*) to sell or dispose of the whole or any part of the undertaking of the company; or

(*g*) to amalgamate with any other company or body of persons.

(2) The alteration shall not take effect until and except in so far as it is confirmed by the Court on petition.

(3) Before confirming the alteration, the Court must be satisfied—

(*a*) that sufficient notice has been given to every holder of debentures of the company, and to any persons or class of persons whose interests will, in the opinion of the Court, be affected by the alteration; and

(*b*) that, with respect to every creditor who in the opinion of the Court is entitled to

object, and who signifies his objection in manner directed by the Court, either his consent to the alteration has been obtained or his debt or claim has been discharged or has determined, or has been secured to the satisfaction of the Court:

Provided that the Court may, in the case of any person or class, for special reasons, dispense with the notice required by this section.

Power of Court when confirming alteration.

13. The Court may make an order confirming the alteration either wholly or in part, and on such terms and conditions as it thinks fit, and may make such order as to costs as it thinks proper.

Exercise of discretion by Court.

14. The Court shall, in exercising its discretion under sections 12 and 13, have regard to the rights and interests of the members of the company or of any class of them, as well as to the rights and interests of the creditors, and may, if it thinks fit, adjourn the proceedings in order that an arrangement may be made to the satisfaction of the Court for the purchase of the interests of dissentient members; and may give such directions and make such orders as it may think expedient for facilitating or carrying into effect any such arrangement:

Provided that no part of the capital of the company may be expended in any such purchase.

Procedure on confirmation of the alteration.

15. (1) A certified copy of the order confirming the alteration, together with a printed copy of the memorandum as altered, shall, within three months from the date of the order, be filed by the company with the registrar, and he shall register the same, and shall certify the registration under his hand, and the certificate shall be conclusive evidence that all the requirements of this Act with respect to the alteration and the confirmation thereof have been complied with, and thenceforth the memorandum so altered shall be the memorandum of the company.

(2) The Court may by order at any time extend the time for the filing of documents with the registrar under this section for such period as the Court thinks proper.

Effect of failure to register within three months.

16. No such alteration shall have any operation until [illegible]stration thereof has been duly effected in accordance [illegible]provisions of section 15, and if such registration [illegible] within three months next after the date of [illegible]urt confirming the alteration, or within [illegible]may be allowed by the Court in

accordance with the provisions of section 15, such alteration and order and all proceedings connected therewith shall, at the expiration of such period of three months or such further time, as the case may be, become absolutely null and void:

Provided that the Court may, on sufficient cause shown, revive the order on application made within a further period of one month.

ARTICLES OF ASSOCIATION.

Registration of articles.

17. (1) There may, in the case of a company limited by shares, and there shall, in the case of a company limited by guarantee or unlimited, be registered with the memorandum, articles of association signed by the subscribers to the memorandum and prescribing regulations for the company.

(2) Articles of association may adopt all or any of the regulations contained in Table A in the First Schedule and shall in any event be deemed to contain regulations identical with or the same effect as regulation 56, regulation 66, regulation 71, regulations 78, 79, 80, 81 and 82, regulation 95, regulation 97, regulation 105, regulation 107 and regulations 112, 113, 114, 115 and 116 contained in that Table:

Provided that regulations 78, 79, 80, 81 and 82 shall not be deemed to be included in the articles of any private company except a private company which is the subsidiary company of a public company:

Provided further that regulation 107 shall be deemed to require that a statement of the reasons why of the whole amount of any item of expenditure which may in fairness be distributed over several years, only a portion thereof is charged against the income of the year, shall be shown in the profit and loss account, unless the company in general meeting shall determine otherwise.

(3) In the case of an unlimited company or a company limited by guarantee, the articles, if the company has a share capital, shall state the amount of share capital with which the company proposes to be registered.

(4) In the case of an unlimited company or a company limited by guarantee, if the company has no share capital, the articles shall state the number of members with which the company proposes to be registered for the purpose of enabling the registration fees payable on registration.

Application of Table A.

18. In the case of a company limited by shares and registered after the commencement of this Act, if articles are not registered, or if articles are registered, in so far as the articles do not exclude or modify the regulations in Table A in the First Schedule, those regulations shall, so far as applicable, be the regulations of the company in the same manner and to the same extent as if they were contained in duly registered articles.

Form and signature of articles.

19. Articles shall—

(*a*) be printed;

(*b*) be divided into paragraphs numbered consecutively; and

(*c*) be signed by each subscriber of the memorandum of association (who shall add his address and description) in the presence of at least one witness who must attest the signature.

Alteration of articles by special resolution.

20. Subject to the provisions of this Act and to the conditions contained in its memorandum, a company may by special resolution alter or add to its articles, and any alteration or addition so made shall be as valid as if originally contained in the articles, and be subject in like manner to alteration by special resolution.

Effect of alteration in memorandum or articles.

20-A. Notwithstanding anything in the memorandum or articles of a company, no member of the company shall be bound by an alteration made in the memorandum or articles after the date on which he became a member if and so far as the alteration requires him to take or subscribe for more shares than the number held by him at the date on which the alteration is made, or in any way increases his liability as at that date to contribute to the share capital of, or otherwise to pay money to, the company:

Provided that this section shall not apply in any case where the member agrees in writing either before or after the alteration is made to be bound thereby.

General Provisions.

Effect of memorandum and articles.

21. (1) The memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by each member and contained a covenant on the part of each member, his heirs and legal representatives, to observe all the provisions of the memorandum and of the articles, subject to the provisions of this Act.

(2) All money payable by any member to the company under the memorandum or articles shall be a debt due from him to the company.

Registration of memorandum and articles.

22. The memorandum and the articles (if any), shall be filed with the registrar who shall retain and register them.

Effect of registration.

23. (1) On the registration of the memorandum of a company, the registrar shall certify under his hand that the company is incorporated, and in the case of a limited company that the company is limited.

(2) From the date of incorporation mentioned in the certificate of incorporation, the subscribers of the memorandum, together with such other persons as may from time to time become members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company, and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in this Act.

Conclusiveness of certificate of incorporation.

24. (1) A certificate of incorporation given by the registrar in respect of any association shall be conclusive evidence that all the requirements of this Act in respect of registration and of matters precedent and incidental thereto have been complied with, and that the association is a company authorized to be registered and duly registered under this Act.

(2) A declaration by an advocate, entitled to appear before the High Court, who is engaged in the formation of a company, or by a person named in the articles as a director, manager or secretary of the company, of compliance with all or any of the said requirements shall be field with the registrar, and the registrar may accept such a declaration as sufficient evidence of compliance.

Copies of memorandum and articles to be given to members.

25. (1) Every company shall send to every member, at his request and within fourteen days thereof, on payment of one rupee or such less sum as the company may prescribe, a copy of the memorandum and of the articles (if any).

(2) If a company makes default in complying with the requirements of this section, it shall be liable for each offence to a fine not exceeding ten rupees.

25-A. (1) Where an alteration is made in the memorandum or articles of a company, every copy of the memorandum or articles issued after the date of the alteration shall be in accordance with the alteration. Alteration of memorandum or articles to be noted in every copy.

(2) If, where any such alteration has been made, the company at any time after the date of the alteration issues any copies of the memorandum or articles which are not in accordance with the alteration, it shall be liable to a fine not exceeding ten rupees for each copy so issued and every officer of the company who is knowingly and wilfully in default shall be liable to the like penalty.

ASSOCIATIONS NOT FOR PROFIT.

26. (1) Where it is proved to the satisfaction of the Government that an association capable of being formed as a limited company has been or is about to be formed for promoting commerce, art, science, charity or any other useful object, and applies or intends to apply its profits (if any) or other income in promoting its objects, and to prohibit the payment of any dividend to its members, the Government may, by licence under the hand of one of its Secretaries, direct that the association be registered as a company with limited liability, without the addition of the word "Limited" to its name, and the association may be registered accordingly. Power to dispense with "Limited" in name of charitable and other companies.

(2) A licence by the Government under this section may be granted on such conditions and subject to such regulations as the Government thinks fit, and those conditions and regulations shall be binding on the association, and shall, if the Government so directs, be inserted in the memorandum and articles, or in one of those documents.

(3) The association shall on registration enjoy all the privileges of limited companies, and be subject to all their obligations, except those of using the word "Limited" as any part of its name, and of publishing its name, and of sending lists of members to the registrar.

(4) A licence under this section may at any time be revoked by the Government, and upon revocation the registrar shall enter the word "Limited" at the end of the name of the association upon the register, and the association shall cease to enjoy the exemptions and privileges granted by this section:

Provided that, before a licence is so revoked, the Government shall give to the association notice in

writing of its intention, and shall afford the association an opportunity of submitting a representation in opposition to the revocation.

COMPANIES LIMITED BY GUARANTEE.

Provision as to companies limited by guarantee.

27. (1) In the case of a company limited by guarantee and not having a share capital, and registered after the commencement of this Act, every provision in the memorandum or articles or in any resolution of the company purporting to give any person a right to participate in the divisible profits of the company otherwise than as a member shall be void.

(2) For the purpose of the provisions of this Act relating to the memorandum of a company limited by guarantee and of this section, every provision in the memorandum or articles, or in any resolution, of any company limited by guarantee and registered after the commencement of this Act, purporting to divide the undertaking of the company into shares or interests, shall be treated as a provision for a share capital, notwithstanding that the nominal amount or number of the shares or interests is not specified thereby.

PART III.

Share Capital, Registration of Unlimited Company as Limited, and Unlimited Liability of Directors.

DISTRIBUTION OF SHARE CAPITAL.

Nature of shares.

28. (1) The shares or other interest of any member in a company shall be movable property, transferable in manner provided by the articles of the company.

(2) Each share in a company having a share capital shall be distinguished by its appropriate number.

Certificate of shares or stock.

29. A certificate, under the common seal of the company, specifying any shares or stock held by any member, shall be *prima facie* evidence of the title of the member to the shares or stock therein specified.

Definition of "member."

30. (1) The subscribers of the memorandum of a company shall be deemed to have agreed to become members of the company, and on its registration shall be entered as members in its register of members.

(2) Every other person who agrees to become a member of a company and whose name is entered in its register of members, shall be a member of the company.